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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and THE COUNTY OF LOS ANGELES and FARMER BROS. CO., a corporation, THE REAL PARTY IN INTEREST, Petitioners,

vs.

THE LEGISLATURE, ECONOMIC MINERAL L. L. STEWART, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF

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OCTOBER TERM, 1948

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., A CORPORATION, THE REAL PARTY IN INTEREST, *Petitioners,*

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered on February 5, 1948 (R. 215), reversing the judgments of the Superior Court of California for the County of Los Angeles (R. 216), and directing that Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen be discharged (R. 216).

Opinions Below

The memorandum of opinion of the Court below, Superior Court of the State of California in and for the County of Los Angeles, is in the Response of Farmer

Bros. Co., Objections to Granting Review by the Supreme Court of California (R. 169). The opinions in the Supreme Court of California (R. 215); Dissenting Opinion (R. 216) are reported in 31 Advance California Reports, page 460, 189 Pac. (2d) 265. The Opinion relied upon by the Supreme Court of California holding unconstitutional the law here involved, *In Re Blaney* (R. 181), Dissenting Opinion (R. 199), is reported in 30 Advance California Reports, page 648. Dissenting Opinion, page 666, 184 Pac. Rep. (2d) 892.

Jurisdiction

The judgment of the Supreme Court of California was entered February 5, 1948 (R. 215). It ordered that the judgments of the Superior Court "the judgments and orders of commitment in each of the above entitled cases are annulled and the petitioners are discharged." The constitutional issues here presented were urged in the trial court (R. 118, 107, 121), where the demurrers of Lillefloren and the others were overruled in the court below. The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended.

Questions Presented

Sections 1131-1136 of the Labor Code of California defines certain acts which are called hot cargo and secondary boycotts. Certain definitions are given and provision is made for injunctive relief and recovery of damages. The act in substance denounces any act, combination or agreement which directly or indirectly causes, induces, or compels a violation of the provisions of the act or inflicts any loss, injury or damage, and defines "hot cargo" "secondary boycott."

The questions presented are:

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1. Whether the act is so uncertain that a person does not know in advance whether its application to his conduct will be constitutional or unconstitutional, and whether it violates due process of law as protected by the Fourteenth Amendment to the Constitution, and abridges free speech as safe-guarded by the First Amendment to the Constitution?

2. Whether the denial by the Supreme Court of California to the petitioners of relief under the facts set forth in the complaint, deprives the petitioners in interest of the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution?

Statutes Involved

The statutory provisions involved are Sections 1131-1136 of the Labor Code of California (Statutes 1941 Ch. 623, § 1, p. 2079), adopted by referendum vote at a general election of the people of California November 3, 1942, subsequent to enactment by the legislature of California, Deering's California Codes (Labor Code, Chapter 8, p. 60):

"CHAPTER 8

HOT CARGO AND SECONDARY BOYCOTTS

(Added by Stats. 1941, ch. 623, § 1, p. 2079; Adopted by referendum vote at general election of November 3, 1942.)

§ 1131. Declaration of unlawfulness.

§ 1132. Acts, etc., causing violation of chapter.

§ 1133. Injunctive relief: Recovery of damages.

§ 1134. Definitions.

§ 1135. Duration of statute.

§ 1136. Invalidity of provision or of application to particular person or circumstance.

§ 1131. *Declaration of unlawfulness.* The "hot cargo" and "secondary boycott" are hereby declared to be unlawful. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

The statute by which this chapter was added further contained the following section:

§ 2. (Purposes of act.) This act is enacted for the purpose of preserving tranquility among the citizens of this commonwealth and to insure during this present critical period of National emergency and intensive armament the unobstructed production and distribution of the products of our factories and fields, for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this State. (Stats. 1941, ch. 623, § 2.)

Anno: See 12 Mck. Dig. Labor, § 22; 15 Cal. Jur. 578; 31 Am. Jur. 957, *et seq.*

§ 1132. *Acts, etc., causing violation of chapter.* Any act, combination or agreement which directly or indirectly causes, induces or compels a violation of any of the provisions of this chapter, or inflicts any loss, injury or damage on anyone because of his refusal to violate any of the provisions of this chapter shall be unlawful. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

§ 1133. *Injunctive relief: Recovery of damages.* Any person injured or threatened with injury by any violation of any of the provisions of this chapter shall be entitled to injunctive relief therefrom in a proper case, and to recover any damages resulting therefrom in any court having jurisdiction in the State of California. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

§ 1134. *Definitions.*

(a) ("Hot Cargo.") As used in this chapter, "hot cargo" means any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a

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dispute between some other employer and his employees or a labor organization or any combination or agreement resulting in a refusal by employers to handle goods or perform any services for another employer because of an agreement between such other employer and his employees or a labor organization.

(b) ("Secondary boycott.") As used in this chapter, "Secondary boycott" means any combination or agreement to cease performing, or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing, or to cause any employer to cease performing any services for another employer, or to cause any loss or injury to such other employer, or to his employees for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of any other employer, because of an agreement between the latter and his employees or a labor organization.

(c) ("Labor organization.") As used in this chapter, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(d) ("Employer.") As used in this chapter, the term "employer" includes any person acting in the interest of an employer, directly or indirectly and any association of employers, including growers and other hirers of labor.

(e) ("Employee.") As used in this chapter, the term "employee" includes any natural person who works for any person for compensation. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

§ 1135. *Duration of statute.* This chapter shall be in effect until May 1, 1943, and thereafter:

(a) During the continuance of the existence of the National emergency declared by the President of the United States to exist, by his proclamation issued under date of September 8, 1939.

(b) During any period of war between the United States of America and any foreign power, legally declared to exist. (Added by Stats. 1941, ch. 623, § 1, p. 2080.)

§ 1136. *Invalidity of provision or of application to particular person or circumstance.* If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Added by Stats. 1941, ch. 623, § 1, p. 2080.)"

Statement

On May 21, 1946, petitioners in interest, Farmer Bros. Company, a corporation, filed a suit in the Superior Court of the State of California in and for the County of Los Angeles (R. 2). Among the defendants therein and respondents herein were Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen, all of whom were alleged to be business agents and representatives of certain labor union defendants (R. 9-11-12). The allegations of the complaint may be summarized as follows:

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Farmer Bros. Company is a corporation organized under the laws of the State of California, having its principal place of business in Los Angeles, California, and for more than twenty years had been engaged in the business of roasting, packaging, distributing and selling coffee, tea, spices, with restaurant crockery to cafes, restaurants, coffee shops and institutions. The company also engaged in manufacturing and assembling coffee-brewing and coffee-dispensing machinery, stoves and urns. The business was both intra-state and inter-state. The company imported raw coffee from Central and South America, processing it at its plant in Los Angeles and then shipping it for distribution and sale to various points, including branch offices throughout California, Oregon, Nevada, Arizona, Idaho, Texas, Utah and New Mexico (R. 8). That in connection with the distribution of its products, the company used licensed common carriers, such as steam ship companies, railroad companies and trucking concerns. (R. 10).

That in the conduct of its business, the company employed approximately three hundred persons; that there was not any labor controversy or disputes between the company and its employees; that the defendant unions did not represent a majority of the company's employees for collective bargaining purposes but notwithstanding, the unions and their agents, the respondents herein, demanded that the company sign a closed shop contract.

The company protested that under the Wagner Act they could not do so unless the unions represented a majority of its employees, the company being in inter-state commerce and subject to the Wagner Act.

The unions reported: "You had better sign this contract because we could picket this place for ten years and

we don't think we could get a majority of your employees to join our unions" (R. 15) (C. R. 19).

The company refused to sign such a contract in the absence of a showing that the unions represented a majority of its workers for collective bargaining purposes, or an election to determine that question, to be conducted by the N. L. R. B. The unions placed the company on the unfair list and then commenced notifying railroads, steamship companies, common carriers and suppliers of the company that if they did business with the company such concerns would have trouble, that their employees would be called out on strike (Par. XXV, Complaint, R. 20).

As a result, the company had several carloads of coffee, valued in excess of Fifty-Thousand ($50,000.00) Dollars, kept in San Pedro Harbor, California (Par. XXVI, Complaint, R. 21). The company was practically stopped from doing business with common carriers (Pars. XXIX, XXX, XXXI of Complaint, R. 22-30).

The complaint alleges that the defendant unions therein named and others as agents thereof, including the respondents herein, entered into a combination and agreement in violation of the Statute herein involved, to carry out the purposes of such agreement and to force Farmer Bros. Company to execute a closed shop contract (Pars. XXXIV, XXXV, XXXVI, XXXVII, XXXVIII and XXXIX, R. 32-35). Complaint also contained an allegation that the company had "no plain, speedy or adequate remedy at law," and unless restrained from performing and committing the unlawful acts complained of, the defendants therein would cause irreparable damage and injury to the company (Par. XLI Complaint R. 36). The complaint then alleges a second cause of action, in Paragraphs I, II and III of the second cause of action, and invokes Sections 1131-1136 inclusive, of the Labor Code and alleges it had

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been damaged in the sum of Twenty-Five Thousand ($25,000.00) Dollars.

The prayer follows asking for injunctive relief, both temporary and permanent. Affidavits of Ted Ehler, Tony Sinozich and Louis Clemens were filed, and application for a temporary restraining order and order to show cause were made, and on May 22, 1946 the Superior Court of the State of California in and for the County of Los Angeles, upon the complaint and such affidavits, issued a temporary restraining order and order to show cause (R. 54), and thereafter demurrers of various defendants were filed (R. 56-57-69) raising the constitutional questions and extensive memoranda of points and authorities were filed (R. 62).

After issuance of the temporary restraining order, the respondents herein were each duly served with the same and thereafter a joint affidavit of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, in support of the Company's application for the alleged contempt of Gay Lillefloren, was filed; and subsequently an affidavit of Roy F. Farmer for contempt of Gay Lillefloren and L. L. Sylvane was filed (R. 81); and thereafter an affidavit as to Homer Ford, Russell Marks and Irv Magisen, said affidavit being of Roy F. Farmer, was filed (R. 97), and an Order to Show Cause was issued by the Superior Court (R. 95), directing Gay Lillefloren, Homer Ford, Russell Marks and Irv Magisen to appear and show cause why they should not be punished for contempt of court (R. 96).

The charging affidavit for contempt alleged: That after the filing of the complaint by the company, the temporary restraining order had issued, and the complaint was incorporated in its entirety in the charging affidavit, by reference; That the respondents herein had been duly served with the same, and it also alleged that notwithstanding that they had interfered with the General Steamship Cor-

poration, the Indies Terminal Company and the Sheriff of Los Angeles County in the delivery of several hundred sacks of green coffee by the steamship companies, which were alleged to be common carriers, to Farmer Bros. Company, said respondents threatened the common carriers that unless they ceased delivering coffee to the company that the dock "would be tied up."

The respondents herein appeared by demurrer charging that it was a violation of the constitutional rights and violated the Fourteenth Amendment to the Constitution (R. 107-118). Demurrers to the contempt affidavits were overruled and thereafter the contempt matters were set down for trial and tried before the Honorable Jess E. Stevens, Judge Presiding, Department 30 of the Superior Court of the State of California in and for the County of Los Angeles. The trial extended over some days, argument was made to the court and briefs filed. Thereafter the court rendered a memorandum opinion. (See Response of Farmer Bros. Co., Objections to Granting Review, R. 169).

After such opinion by the court, judgment and warrants of commitment on conviction of contempt of court were rendered against respondents, Homer Ford (R. 124), against Gay Lillefloren (R. 146), against Russell Marks (R. 131), against Irv Magisen (R. 138), and against Sylvane (R. 156).

Thereafter, petitions were filed with the Supreme Court of California for review. The matters were argued, submitted and decided by the Supreme Court of California as hereinbefore indicated.

Thereafter, a petition was filed by the Superior Court of the State of California in and for the County of Los Angeles and the respondent in interest, Farmer Bros. Co., seeking a rehearing by the Supreme Court of California. This was subsequently denied by the Supreme Court of

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California (31 A. C. No. 13, Minutes, page 5), Justice Shenk voting for rehearing.

Specification of Errors to be Urged

The Supreme Court of California erred:

1. In holding that the so-called "hot cargo and secondary boycott law" was so uncertain that it violated due process of law as protected by the Fourteenth Amendment to the Constitution and that it was unconstitutional for the reason that it abridged the right of free speech as guaranteed by the First Amendment to the Constitution.

2. In refusing to grant relief to the petitioners in interest under the facts set forth in the complaint, the Supreme Court deprived the petitioners in interest of the equal protection of the law and it amounted to a denial of due process of law in violation of the Fourteenth Amendment to the Constitution.

The injunction claimed was good and restrained the commission by the respondents of unlawful acts and, in equity, Farmer Bros. Co. were entitled to the injunction, and its denial by the Supreme Court of California amounts to a denial of equal protection under the law and a denial of due process.

Reasons for Granting the Writ

I

SECTIONS 1131-1136 OF THE LABOR CODE OF CALIFORNIA ARE CONSTITUTIONAL, CLEAR, CERTAIN AND READILY NOTIFY A PERSON OF ORDINARY INTELLIGENCE OF THE ACTS DENOUNCED. IT WAS A PROPER EXERCISE OF THE POLICE POWER OF THE STATE.

Sections 1131 to 1136 of the Labor Code are plain, certain and readily understood and represent nothing more

than the right of the State to protect against abuses of the right of free speech.

The state had a right to impose limits on the concerted actions of labor unions, its members and agents, and this act represented the policy of the people of the State of California in such matters, as indicated by the enactment of the law by the Legislature in the first instance and its subsequent ratification in referendum by the people of the State of California. (*In Re Blaney,* 30 Advance California Reports, 648, 666.)

This act resulted from numerous statements by the Supreme Court of the State of California to the effect that "with reference to the power that is placed in the hands of a few persons by combinations and organizations on either side, that these are considerations for the law making power not for the courts." *C. S. Smith Metropolitan Market Co.* v. *Lyons,* 16 Cal. (2d) 389, 400; *McKay* v. *Retail Automobile Salesmen's Local Union 1067,* 16 Cal. (2d) 311, 331;

It is the unlawful agreement and conspiracy and concerted action that is denounced by this law and the facts recited in the complaint show that the demands made by the union were unlawful; they did not represent a majority of the workers for collective bargaining purposes, and any contract that had been entered into would have been void *ab initio.* The court of equity had nothing to do but to issue an injunction, for the unlawful agreement had as its objective an unlawful purpose. National Labor Relations Act (29 U. S. C. A. 151, *et seq.*); See *Park & Tilford Import Corp.* v. *International, etc., of Teamsters,* 27 Cal. (2d) 599.

Unlawful demands were made upon common carriers to refuse to perform in accordance with the law and their bounden duty as common carriers. Such a demand was

unlawful. (See California Civil Code, Sec. 2169, 2170; Inter-State Commerce Act, Sec. 1, (4), 49 U. S. C. 1 (4); Cal. Const., Art. 12, Par. 21; Public Utility Act, Sec. 19; Deering's Act 6386, Sec. 19.)

Under the Sherman Law and Clayton Act, prior to the implied amendment thereof in 1932 by the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. 101) as interpreted in *United States* v. *Hutcheson*, 312 U. S. 219, the Supreme Court held that "boycotts through combinations restraining interstate commerce were unlawful acts and subject to civil action as well as being a crime." This was true whether or not the boycott was carried on solely by peaceful persuasions, it was true whether or not the boycott was organized solely by unions and their members. See *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 466, 468, 474, 478; *Bedford Company* v. *Stone Cutter's Assn.*, 274 U. S. 37, 50, 55; *Lawlor* v. *Loewe*, 235 U. S. 522.

Even today a boycott carried on by a combination of unions and members, violates the Sherman Act. *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797.

The fact that the Supreme Court thus construed and applied the Sherman Act, the repeated decisions over many years as a statute prohibiting secondary boycotts by labor unions, leaves no room for the claim, we submit that a statute so providing is unconstitutional. Even the judges who dissent from the court's decisions in the cases cited above were careful to say that the matter was strictly one of statutory construction and not of constitutional right. See *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 488. To the same effect is *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 488: "Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of Statutory construction, not constitutional power." See *National Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 39-40.

Even as far back as 1908, in *Parkinson Co.* v. *Bldg. Trades Council*, 154 Cal. 581, the Court upheld the right of labor to conduct a secondary boycott, there being no statute prohibiting it. In the opinion of the Court by Chief Justice Beatty it was said, page 599:

> "Whatever others may think of the policy or justice of such a rule, that is a matter outside the province of the courts, and as with regard to other questions of economic or political aspect, the remedy, if a remedy is needed, must be found by the legislature."

Recent cases in California have not deviated from that rule, or modified those statements—that relief was to be had from the legislature, whose duty it was to protect the public welfare. See *McKay* v. *Retail Auto S. L. Union No. 1067*, 16 Cal. (2d) 311, 331. See also, *C. S. Smith Met. Market Co.* v. *Lyons*, 16 Cal. (2d) 389, 400.

The facts recited in the complaint in question were sufficient to bring the present case within the many cases which hold that combinations for unlawful purposes and activities in support thereof, even including peaceful picketing, may be or become actionable or enjoinable and even in the absence of a Statute such action infringes no Constitutional action of any kind. See *James* v. *Marinship Corp.* (1944), 25 Cal. (2d) 721, 728; *Bautista* v. *Jones* (1945), 25 Cal. (2d) 746, 748, 752; *Carpenters & Joiners Union* v. *Ritter's Cafe* (1942), 315 U. S. 722, 725, 728.

This is a case where a plain pattern is laid down by the cases dealing with the subject in hand. The cases established that the legislature may make unlawful—as here it has done—concerted action to effect a secondary boycott. The cases hold, without any dissent, that combinations for an unlawful purpose and picketing in support thereof can be prohibited. Admittedly, the public can by statute put some limitation on the scope of labor

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disputes and can localize them to some extent. In other words, the legislature has the right to define the limits within which the combatants in a labor dispute may conduct their warfare. See *Carpenter's & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 728. See also *Bakery & Pastry Drivers, etc.* v. *Wohl*, 315 U. S. 769, 775. "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual."

Mr. Justice Shenk, in the dissenting opinion, in the case of *In Re Blaney*, 30 A. C. 648, 666, said:

> "This court has repeatedly said, in accord with prevailing judicial opinion elsewhere, that conflicts in labor-management relations can best be controlled, not by the courts but by the Legislature." (citing cases).
>
> "Since those decisions were rendered the Legislature has acted, not once but twice in declaring the "hot cargo" and "secondary boycott" unlawful labor practices and has provided redress by civil action.
>
> The first act was passed in 1941 (Stats. 1941, p. 2079). The referendum was invoked against it and the effective date of the act was postponed until its approval by the electors of the state at the general election in November, 1942. During the campaign for and against it the terms of the enactment were extensively discussed, and its meaning and effect were thoroughly understood. That act contained a provision limiting its effective duration until May 1, 1943, and thereafter during the period of war between the the United States and any foreign power.
>
> The last session of the legislature (Stats. 1947, p. 844, ch. 278) eliminated the emergency provision but without changing the law as enacted in 1941. This was done after extensive discussion and hearings during the legislative session. Now, after the Legislature has twice so acted and the electors of the state have approved the law, this court proceeds to strike it down for reasons which I deem insufficient and not

compelled by any constitutional provision or by any decision of the Supreme Court of the United States."

The respondents in this case knew full well what they were doing. They thoroughly understood what they were restrained from doing and the conduct of one of the respondents, at the time of the service of the injunction on him, demonstrated his knowledge of the proceeding, the law, and his utter contempt for the courts, as Mr. Judge Stephens said (R. 169) (Response of Farmer Bros. Co., Objections to Granting Review, pp. 7-8):

> "While the following incident constitutes no part of the contempt, as it was not prohibited by the order, nor did it take place in the presence of the Court, it may be mentioned as throwing some light on the attitude and intention of defendant Lillefloren in the premises. When he was served with the papers herein mentioned he asked what he was supposed to do with them and was told that he should read them carefully. He then expressed the intention of using them for a purpose for which that type of paper is neither designed nor well adopted, involving their application to a portion of his body in a manner indicating complete disrespect for the contents of the documents."

II

THE DENIAL BY THE SUPREME COURT OF CALIFORNIA TO THE PETITIONER, FARMER BROS. CO., THE REAL PARTY IN INTEREST, OF RELIEF UNDER THE FACTS SET FORTH IN THE COMPLAINT DEPRIVED THE PETITIONER IN INTEREST OF THE EQUAL PROTECTION OF THE LAW AND DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

Under the facts recited in this case, Farmer Bros. Co., being in inter-state commerce, under the National Labor Act as it then existed, could not deal with a union which did not represent a majority of its members for collective bargaining purposes. (29 U. S. C. A. 151, *et seq.*); *Park &*

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Tilford Import Corp. v. *International, etc., of Teamsters,* 27 Cal. (2d) 599.

There can be no doubt but that the demands were for an unlawful purpose. There is no room in this case for the reviewing court (Supreme Court of California) to disregard the cold findings of fact by the trial court and assume that the purposes for which the union conducted its concerted activities was different than that which the evidence shows conclusively it to have been.

The hard realities in this case show that this concern employed more than 250 employees and the union had been trying to organize them; that the concern was in inter-state commerce; also, the union was unsuccessful. They then made demands that the employer sign a "closed shop contract". (See Paragraphs XXI, XXII, XXIII of the Complaint (R. 14-18).

The complaint recites facts which demonstrate an unlawful interference with common carriers and the decision in this case runs counter with the decision filed the same day by the Supreme Court of California in the case of *N. W. Pac. R. R. Co.* v. *Lumber & S. W. Union,* 31 Advance California Reports, p. 448, where the Court sustained an injunction interfering with a common carrier in the discharge of its bounden duty. To grant relief to the railroad in one breath and to deny it to Farmer Bros. Co. in the next is a plain denial of equal protection of the Law. (*Yick Wo* v. *Hopkins,* 118 U. S. 220.)

Plainly the acts of the union were unlawful in that the demands in the first instance were unlawful—the demand of a "closed shop contract" where they did not represent the majority of the workers. Next, they proceeded with the interference with common carriers in the discharge of a duty which, under the law, they were required to perform.

In these contempt proceedings, Lillefloren and the other

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agents interfered with the delivery of green coffee by a common carrier. It was a plain effort to put Farmer Bros. Co. out of business if they failed to accede to the unlawful demands of the respondents.

Manifestly, to permit this decision to stand makes the California courts impotent to grant relief. It deprives even a court of equity of the right to restrain unlawful activities.

Conclusion

WHEREFORE, the petition for a Writ of Certiorari to the Supreme Court of California should be granted.

Respectfully submitted,

RUSSELL E. PARSONS,
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Farmer Bros. Co., the real party in interest.

HAROLD W. KENNEDY,
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The Superior Court.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., A CORPORATION, THE REAL PARTY IN INTEREST, *Petitioners*,

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Preliminary Statement

For a statement showing the disposition of the instant case by the courts below, the basis on which the jurisdiction of this Court is claimed, the questions presented, and a statement of the case, reference is here made to the foregoing Petition for Writ of Certiorari.

Specifications of Errors

The judgment of the Court below should be reversed for the following reasons:

I

IN HOLDING THAT THE SO-CALLED "HOT CARGO AND SECONDARY BOYCOTT LAW" WAS SO UNCERTAIN THAT IT VIOLATED DUE PROCESS OF LAW AS PROTECTED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND THAT IT WAS UNCONSTITUTIONAL FOR THE REASON THAT IT ABRIDGED THE RIGHT OF FREE SPEECH AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION.

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II

IN REFUSING TO GRANT RELIEF TO THE PETITIONERS IN INTEREST UNDER THE FACTS SET FORTH IN THE COMPLAINT, THE SUPREME COURT DEPRIVED THE PETITIONERS IN INTEREST OF THE EQUAL PROTECTION OF THE LAW AND IT AMOUNTED TO A DENIAL OF DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

THE INJUNCTION CLAIMED WAS GOOD AND RESTRAINED THE COMMISSION BY THE RESPONDENTS OF UNLAWFUL ACTS AND, IN EQUITY, FARMER BROS. CO. WERE ENTITLED TO THE INJUNCTION, AND ITS DENIAL BY THE SUPREME COURT OF CALIFORNIA AMOUNTS TO A DENIAL OF EQUAL PROTECTION UNDER THE LAW AND A DENIAL OF DUE PROCESS.

Argument

I

IN HOLDING THAT THE SO-CALLED "HOT CARGO AND SECONDARY BOYCOTT LAW" WAS SO UNCERTAIN THAT IT VIOLATED DUE PROCESS OF LAW AS PROTECTED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND THAT IT WAS UNCONSTITUTIONAL FOR THE REASON THAT IT ABRIDGED THE RIGHT OF FREE SPEECH AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION.

The law was constitutional and it was for the State of California to determine the policy of the State with reference to fixing the boundaries and the area within which labor disputes might be conducted.

The People of the State of California acted in determining this policy in the first instance through the Legislature. Then, they themselves enacted this law by referendum. It is not for the courts to disturb that policy-making by the Legislature and the people, unless it plainly and clearly appears that it is an abridgment of important constitutional rights—which, we assert, it is not. The law is constitutional.

See: *Duplex Printing Co.* v. *Deering*, 254 U. S. 433.

"Picketing" involves more than expression. This was effectively demonstrated in *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, the Court said:

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"It is true that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But the recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this line is to write into the Constitution the notion that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the states to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.

"In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. (Citing Teller and other writers.) We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into *doctrinaire dogma*. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill* v. *Alabama*, 310 U. S. 88, 103, 104 (60 S. Ct. 736, 84 L. Ed. 1093.)

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end

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when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

In the dissenting opinion of Mr. Justice Shenk, *In Re Blaney*, 30 A. C. 648, 666, 672, cases in support of the law are assembled.

> "Picketing by an organized group is more than free speech."
>
> *Allen Bradley Local* v. *Wisconsin Employment Relation Board*, 315 U. S. 740;

Dorchy v. *Kansas*, 272 U. S. 306, which upheld a Statute of Kansas making it unlawful to conspire to induce others to quit their employment, etc.

Numerous laws have been upheld as constitutional enactments by Legislatures, particularly dealing with combinations in restraint of trade, price fixing, concerted activities of numerous kind. Even in California, the Unfair Practices Act, Statutes 1931, page 508 as amended by Act 8787 of the General Laws, was held constitutional.

One of these "fair trade acts" was under consideration by the United States Supreme Court in the case of *Old Dearborn Distributing Company* v. *Seagram-Distillers Corp.*, 299 U. S. 183. See also, *Wholesale Tobacco Dealers Bureau of Southern California* v. *National Candy & Tobacco Company*, 11 Cal. (2d) 634.

The entire argument advanced by the Supreme Court of California seems to follow that of the District Court in the case of *United States* v. *Petrillo*, 68 F. Supp. 845, which case was reversed by the Supreme Court of the United States in *United States* v. *Petrillo*, Supreme Court Reporter, Volume 67, No. 16, Page 1538.

II

IN REFUSING TO GRANT RELIEF TO THE PETITIONERS IN INTEREST UNDER THE FACTS SET FORTH IN THE COMPLAINT, THE SUPREME COURT DEPRIVED THE PETITIONERS IN INTEREST OF THE EQUAL PROTECTION OF

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THE LAW AND IT AMOUNTED TO A DENIAL OF DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

THE INJUNCTION CLAIMED WAS GOOD AND RESTRAINED THE COMMISSION BY THE RESPONDENTS OF UNLAWFUL ACTS AND, IN EQUITY, FARMER BROS. CO. WERE ENTITLED TO THE INJUNCTION, AND ITS DENIAL BY THE SUPREME COURT OF CALIFORNIA AMOUNTS TO A DENIAL OF EQUAL PROTECTION UNDER THE LAW AND A DENIAL OF DUE PROCESS.

We contend that Farmer Bros. Co. are denied equal protection of the law in that the Labor Unions are permitted to make unlawful demands upon them. They are permitted to interfere with common carriers in the transaction of their bounden duties and Farmer Bros. Co. are left without remedy if this decision is to stand.

The decision in *N. W. Pac. R. R. Co.* v. *Lumber & S. W. Sawmill Workers Union*, 31 A. C. 448, where relief was granted to a common carrier to restrain interference with them is to us a gross denial of equal protection of the laws, and the decision of the Supreme Court of the State of California in the Lillefloren cases, if permitted to stand, leaves Farmer Bros. Co. without any remedy and is a violation of due process of law. Their business is entitled to protection. The demands were unlawful. (See *Dorchy* v. *Kansas*, 272 U. S. 306; *U. S.* v. *Petrillo, supra; Allan Bradley Local* v. *Wisconsin Employment Board*, 315 U. S. 740; *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722; *James* v. *Marinship Corporation*, 25 Cal. (2d) 721.

In fact, in the case of *Bautista* v. *Jones*, 25 Cal. (2d) 746, an injunction to restrain picketing and boycotting to carry out concerted effort to bring about the acceding to an unlawful demand of the union was made. The injunction was sustained and there the California Supreme Court reviewed all of the cases upon the subject. Here, they have completely reversed their position and it amounts to a de-

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nial of equal protection to Farmer Bros. Co. and a denial of due process.

Conclusion

In the light of these circumstances, it appears that, in the instant case, the law should be held constitutional, and the Supreme Court of California decision reversed, and a denial of the equitable process of the court under the facts recited establishes that the petitioner in interest Farmer Bros. Co., has been deprived of Federal due process by the judgment of the State Supreme Court of California.

This Court should grant certiorari and order the judgment below reversed.

The People of the State of California established the policy of that State with reference to the matters herein involved and no showing has been made that the act in question is a violation of law. It represents a proper exercise of the power of the State in the public welfare, to define and to limit the area within which industrial combatants may wage warfare, such conduct, at best, being harmful to the general welfare of the State.

Respectfully submitted,

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